

1 CHAPTER ~~1.1~~ 2.

2 STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA.

3 **Drafting note: Existing chapter 1.1 is reorganized as proposed Chapter 2 and**
4 **technical changes are made throughout for the sake of consistency and clarity.**

5 Article 1.

6 Membership and Organization.

7 **Drafting note: Proposed Article 1 includes provisions related to the establishment,**
8 **membership, and organization of the Council.**

9 § ~~23-9.3~~ 23.1-2xx. State Council of Higher Education for Virginia ~~created~~ established;
10 purpose; membership; terms; officers.

11 A. ~~There is hereby created a~~ The State Council of Higher Education for Virginia,
12 ~~hereinafter sometimes referred to as the Council. The purpose of the Council shall be, through~~
13 ~~the exercise of the powers and performance of the duties set forth in this chapter, is established~~
14 to advocate for and promote the development and operation of an educationally and
15 economically sound, vigorous, progressive, and coordinated system of higher education in the
16 Commonwealth ~~of Virginia~~ and ~~to~~ lead state-level strategic planning ~~and~~, policy development,
17 and implementation based on research and analysis and in accordance with § ~~23-38.87-10~~ 23.1-
18 3xx and subsection B of § ~~23-38.88~~ 23.1-10xx. The Council shall ~~also~~ seek to facilitate
19 collaboration among institutions of higher education that will enhance quality and create
20 operational efficiencies and ~~shall~~ work with institutions of higher education and their governing
21 boards on board development.

22 B. The Council shall be composed of ~~persons~~ individuals selected from the
23 Commonwealth at large without regard to political affiliation but with due consideration of
24 geographical representation. ~~Appointees~~ Members shall have demonstrated experience,
25 knowledge, and understanding of higher education and workforce needs. ~~Appointees~~ Members
26 shall be selected for their ability and all appointments shall be of such nature as to aid the work
27 of the Council and ~~to~~ inspire the highest degree of cooperation and confidence. No officer,

employee, trustee, or member of the governing board of any institution of higher education, employee of the Commonwealth, member of the General Assembly, or member of the ~~State~~ Board of Education shall be eligible for appointment to the Council except as specified in this section. All members of the Council shall be deemed members at large charged with the responsibility of serving the best interests of the whole Commonwealth. No member shall act as the representative of any particular region or of any particular institution of higher education.

C. The Council shall consist of 13 members: 12 nonlegislative citizen members appointed by the Governor ~~and subject to confirmation by the General Assembly at its next regular session~~ and one ex officio member. At least one ~~appointee~~ nonlegislative citizen member shall have served as a president or chief executive of a public institution of higher education ~~in the Commonwealth~~. At least one nonlegislative citizen member shall be a ~~sitting Virginia school superintendent, either at the state or local level division superintendent or the Superintendent of Public Instruction~~. The President of the Virginia Economic Development Partnership Authority shall serve ex officio with voting privileges.

D. All terms shall begin July 1. ~~Members shall be appointed for four-year terms, except that appointments to fill vacancies occurring shall be for the unexpired term.~~

~~D. No person having served on the Council for two terms of four years shall be eligible for reappointment to the Council for two years thereafter.~~

E. ~~The Council shall elect a chairman and a vice chairman from its own membership and~~ Members shall serve for terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member shall serve for more than two consecutive terms; however, a member appointed to serve an unexpired term shall be eligible to serve two consecutive four-year terms. No member who has served two consecutive four-year terms shall be eligible to serve on the same board until at least two years have passed since the end of his second consecutive four-year term. All appointments shall be subject to confirmation by the General Assembly. Members shall continue to hold office until their successors have

54 been appointed and confirmed. Ex officio members shall serve a term coincident with their term
55 of office.

56 F. The Council shall elect a chairman and a vice-chairman from its membership.

57 The Council shall appoint a secretary and such other officers as it deems necessary ~~or~~
58 ~~advisable~~ and ~~shall~~ prescribe their duties and ~~term~~ terms of office.

59 ~~F. G.~~ At each meeting, the Council shall involve the presidents of the public institutions
60 of higher education in its agenda. The presidents shall present information and comment on
61 issues of common interest. The presidents shall choose presenters to the Council from among
62 themselves who reflect the diversity of the institutions.

63 H. At each meeting, the Council may involve other groups, including the presidents of
64 nonprofit private, ~~nonprofit~~ institutions of higher education, in its agenda.

65 **Drafting note: Proposed subsection E contains provisions on term length, term**
66 **limits, vacancies, and confirmation that conform to provisions contained in proposed §**
67 **23.1-13xx. Technical changes are made.**

68 ~~§ 23-9.3-1~~ 23.1-2xx. Student advisory committee.

69 A. ~~The State Council of Higher Education~~ shall appoint a student advisory committee
70 ~~comprised consisting~~ of students enrolled in public or accredited private institutions of higher
71 education ~~in the Commonwealth and students enrolled in private and accredited institutions of~~
72 ~~higher education in the Commonwealth,~~ whose primary purpose is to provide collegiate or
73 graduate education and not to provide religious training. Appointments shall be made in a
74 manner to ensure broad student representation from among such institutions.

75 ~~All appointments shall be made~~ B. Members shall serve for ~~a term~~ terms of one year
76 ~~each, except that appointments to fill vacancies. Vacancies occurring other than by expiration of~~
77 a term shall be filled for the unexpired term. Members ~~of the student advisory committee~~ may
78 be reappointed to serve subsequent or consecutive terms.

D. The student advisory committee shall meet at least twice annually and ~~shall~~ advise the ~~State Council of Higher Education~~ regarding such matters as may come before ~~the advisory committee~~ it.

The Council shall ~~employ~~ appoint and ~~appoint~~ employ a director who shall be the chief executive officer of the Council, and employ such other personnel as may be required to assist it in the exercise ~~and performance~~ of its powers and duties.

Powers and Duties.

~~The Council shall constitute a coordinating council for the College of William and Mary in Virginia, George Mason University, Longwood University, James Madison University, the University of Mary Washington, Norfolk State University, Old Dominion University, Radford University, the University of Virginia, Virginia Commonwealth University, Virginia Military Institute, Virginia Polytechnic Institute and State University, Virginia State University, Christopher Newport University and the Virginia Community College System, branches, divisions or colleges of any of the foregoing, and such other state-supported institutions of higher education as may in the future be established.~~

Drafting note: The provisions of existing § 23-9.5 establishing the Council as a coordinating council for public institutions of higher education are stricken here and incorporated into proposed subdivision 24 of § 23.1-2xx (next section).

~~§ 23-9.6.~~

Drafting note: Repealed by Acts 1974, c. 544.

~~§ 23-9.6:1 23.1-2xx.~~ Duties of Council ~~generally~~.

~~In addition to such other duties as may be prescribed elsewhere, the State~~ The Council of ~~Higher Education~~ shall:

1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection B of ~~§ 23-38.88~~ 23.1-10xx or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of ~~§ 23-38.87:20~~ 23.1-3xx for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in ~~Virginia~~ the Commonwealth at both the undergraduate and the graduate levels, ~~as well as~~ and the mission, programs, facilities, and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other matters as the Council deems appropriate. The Council shall revise such ~~plans~~ plan at least once every six years and shall submit such recommendations as are necessary for the implementation of the plan to the Governor and the General Assembly.

2. Review and approve or disapprove any proposed change in the statement of mission of any ~~presently existing~~ public institution of higher education and ~~to~~ define the mission of all newly created public institutions of higher education ~~created after the effective date of this provision~~. The Council shall, ~~within the time prescribed in subdivision 1, make a~~ report such approvals, disapprovals, and definitions to the Governor and the General Assembly ~~with respect to its actions hereunder~~ at least once every six years. No such actions shall become effective until 30 days after adjournment of the session of the General Assembly next following the filing of such a report. Nothing ~~contained~~ in this ~~provision~~ subdivision shall be construed to authorize the Council to modify any mission statement adopted by the General Assembly, ~~nor to~~ or

empower the Council to affect, either directly or indirectly, the selection of faculty or the standards and criteria for admission of any public institution of higher education, whether related to academic standards, residence, or other criteria; ~~it being the intention of this section that faculty.~~ Faculty selection and student admission policies shall remain a function of the individual public institutions of higher education.

3. Study any proposed escalation of any public institution of higher education to a degree-granting level higher than that level to which it is presently restricted and ~~to~~ submit a report and recommendation to the Governor and the General Assembly relating to the proposal. The study shall include the need for and benefits or detriments to be derived from the escalation. No such institution shall implement any such proposed escalation until the Council's report and recommendation have been submitted to the General Assembly and the General Assembly approves the institution's proposal.

4. Review and approve or disapprove all enrollment projections proposed by each public institution of higher education. The Council's projections shall be ~~in numerical terms~~ organized numerically by level of enrollment and shall be used solely for budgetary and fiscal planning purposes ~~only~~. The Council shall develop estimates of the number of degrees to be awarded by each public institution of higher education and include those estimates in its reports of enrollment projections. The student admissions policies for ~~the such~~ institutions and their specific programs shall remain the sole responsibility of the individual boards of visitors; ~~however, but~~ all four-year public institutions of higher education shall adopt dual admissions policies with ~~the comprehensive~~ community colleges; as required by § ~~23-9.2:3.02~~ 23.1-9xx.

5. Review and approve or disapprove all new undergraduate or graduate academic programs ~~which that~~ any public institution of higher education proposes. ~~As used herein, "academic programs" include both undergraduate and graduate programs.~~

6. Review and require the discontinuance of any undergraduate or graduate academic program that is presently offered by any public institution of higher education when the Council determines that such academic program is (i) nonproductive in terms of the number of degrees

granted, the number of students served by the program, the program's effectiveness, and budgetary considerations; or (ii) supported by state funds and ~~is~~ unnecessarily duplicative of academic programs offered at other public institutions of higher education ~~in the Commonwealth~~. The Council shall make a report to the Governor and the General Assembly with respect to the discontinuance of any such academic program. No such discontinuance shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

7. Review and approve or disapprove the ~~creation and~~ establishment of any department, school, college, branch, division, or extension of any public institution of higher education that such institution proposes to ~~create and~~ establish. ~~This duty and responsibility shall be applicable to the proposed creation and establishment of departments, schools, colleges, branches, divisions and extensions,~~ whether located on or off the main campus of ~~the such~~ institution ~~in question. If The Council shall approve~~ any organizational change ~~is determined by the Council that it determines (i)~~ to be ~~proposed~~ solely for the purpose of internal management and ~~the (ii) does not affect the~~ institution's curricular offerings ~~remain constant, the Council shall approve the proposed change~~. Nothing in this ~~provision subdivision~~ shall be construed to authorize the Council to disapprove the ~~creation and~~ establishment of any department, school, college, branch, division, or extension of any institution ~~that has been created and~~ established by the General Assembly.

8. Review the proposed closure of any academic program in a high demand or critical shortage area, as defined by the Council, by any public institution of higher education and assist in the development of an orderly closure plan, when needed.

9. Develop a uniform, comprehensive data information system designed to gather all information necessary to the performance of the Council's duties. The system shall include information on admissions, ~~enrollments~~ enrollment, self-identified students with documented disabilities, personnel, programs, financing, space inventory, facilities, and such other areas as the Council deems appropriate. When consistent with the Government Data Collection and

Dissemination Practices Act ([§ 2.2-3800 et seq.](#)), the Virginia Unemployment Compensation Act ([§ 60.2-100 et seq.](#)), and applicable federal law, the Council, acting solely or in partnership with the Virginia Department of Education or the Virginia Employment Commission, may contract with private entities to create de-identified student records [in which all personally identifiable information has been removed](#) for the purpose of assessing the performance of institutions and specific programs relative to the workforce needs of the Commonwealth. ~~For the purposes of this section, "de-identified student records" means records in which all personally identifiable information has been removed.~~

10. ~~Develop in~~ [In](#) cooperation with [public](#) institutions of higher education, [develop](#) guidelines for the assessment of student achievement. ~~An~~ [Each such](#) institution shall use an approved program that complies with the guidelines of the Council and is consistent with the institution's mission and educational objectives in the development of such assessment. The Council shall report ~~the institutions' assessments~~ [each institution's assessment](#) of student achievement in the biennial revisions to the ~~state's master~~ [Commonwealth's statewide strategic plan](#) for higher education.

11. ~~Develop in~~ [In](#) cooperation with the appropriate state financial and accounting officials, [develop](#) and ~~to~~ establish uniform standards and systems of accounting, ~~record-keeping~~ [recordkeeping](#), and statistical reporting for ~~the~~ public institutions of higher education.

12. Review biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education may propose; and ~~to make a~~ report [such approvals and disapprovals](#) to the Governor and the General Assembly ~~with respect thereto~~. No such change shall ~~be made~~ [become effective](#) until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

13. Visit and study the operations of each ~~of the~~ public ~~institutions~~ [institution](#) of higher education at such times as the Council ~~shall deem~~ [deems](#) appropriate and ~~to~~ conduct such other studies in the field of higher education as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

212 14. Provide advisory services to ~~private, each~~ accredited ~~and~~ nonprofit ~~institutions~~
213 private institution of higher education, whose primary purpose is to provide collegiate or
214 graduate education and not to provide religious training or theological education, on academic,
215 administrative, financial, and space utilization matters. The Council may also review and advise
216 on joint activities, including contracts for services between ~~such~~ public and such private
217 institutions of higher education or between such private institutions of higher education and any
218 agency or political subdivision of the Commonwealth ~~or political subdivision thereof~~.

219 15. Adopt ~~such rules and~~ regulations ~~as that~~ the Council ~~believes deems~~ necessary to
220 implement ~~all of the Council's its~~ duties ~~and responsibilities as set forth in this Code~~ established
221 by state law. ~~The various~~ Each public ~~institutions~~ institution of higher education shall comply
222 with such ~~rules and~~ regulations.

223 16. Issue guidelines consistent with the provisions of the federal Family ~~Education~~
224 Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, requiring public institutions
225 of higher education to release a student's academic and disciplinary record to a student's parent.

226 17. Require ~~that~~ each institution of higher education formed, chartered, or established in
227 the Commonwealth after July 1, 1980, ~~shall to~~ ensure the preservation of student transcripts in
228 the event of institutional closure or revocation of approval to operate in the Commonwealth ~~of~~
229 Virginia. An institution may ~~provide for~~ ensure the preservation of student transcripts by
230 binding agreement with another institution of higher education with which it is not corporately
231 connected or in such other way as the Council may authorize by regulation. In the event that an
232 institution closes, or has its approval to operate in the Commonwealth revoked, the Council,
233 through its ~~Director~~ director, may take such action as is necessary to secure and preserve the
234 student transcripts until such time as an appropriate institution accepts all or some of the
235 transcripts. Nothing in this ~~section~~ subdivision shall be deemed to interfere with the right of a
236 student to his own transcripts; ~~nor shall this section or~~ authorize disclosure of student records
237 except as may otherwise be authorized by law.

18. Require the development and submission of articulation, dual admissions, and guaranteed admissions agreements between two-year and four-year public institutions of higher education ~~in Virginia~~.

19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for ~~the various~~ each public ~~institutions~~ institution of higher education.

20. ~~Develop~~ In consultation with each public institution of higher education, develop a uniform certificate of general studies program, ~~in consultation with the Virginia Community College System and Virginia public institutions of higher education,~~ to be offered at each comprehensive community college ~~in Virginia~~. Such program shall ensure that a community college student who completes the one-year certificate program ~~shall be able to~~ may transfer all credits earned in academic subject coursework to a four-year public institution of higher education ~~in the Commonwealth~~ upon acceptance to ~~the~~ such four-year institution.

~~§ 23-9.8. Cooperation with State Board of Education.~~

~~The Council shall cooperate~~ 21. Cooperate with the ~~State~~ Board of Education in matters of interest to both ~~the~~ public elementary and secondary schools and ~~the state-supported public~~ institutions of higher education, particularly in connection with coordination of the college admission requirements ~~and, coordination of~~ teacher training programs with the public school ~~program. In accomplishing this responsibility, the Council shall consult with programs, and the Board on its Board's~~ Six-Year Educational Technology Plan for Virginia ~~and, The Council~~ shall encourage ~~the~~ public institutions of higher education to design programs ~~which that~~ include the skills necessary for the successful implementation of ~~the~~ such Plan.

~~§ 23-9.8:1. State Council of Higher Education to advise the Brown v. Board of Education Scholarship Awards Committee.~~

~~Consistent with its statutory responsibilities for higher education in the Commonwealth, the Council shall advise~~ 22. Advise and provide technical assistance to the Brown v. Board of Education Scholarship ~~Awards~~ Committee in the implementation and administration of the

Brown v. Board of Education Scholarship Program, pursuant to Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

~~§ 23-9.13. Cooperating with and utilizing facilities of existing state departments, etc.~~
~~In making the studies herein directed and in the performance of its duties hereunder the Council shall, insofar as possible, seek the cooperation and utilize the facilities of existing state departments, institutions, and agencies~~ in carrying out its duties.

24. Serve as the coordinating council for public institutions of higher education.

~~§ 23-9.10:1. Coordinating agency for post-secondary educational programs for health professions and occupations.~~

~~The State Council of Higher Education is hereby designated~~ 25. Serve as the planning and coordinating agency for all post-secondary educational programs for all health professions and occupations. ~~The Council shall~~ and make recommendations, including those relating to financing, ~~whereby for providing~~ adequate and coordinated educational programs ~~may be provided~~ to produce an appropriate supply of properly trained personnel. The Council ~~is authorized to~~ may conduct such studies as it deems appropriate in furtherance of the requirements of this subdivision. All state departments and agencies shall cooperate with the Council in the execution of its responsibilities under this ~~section~~ subdivision.

26. Carry out such duties as the Governor may assign to it in response to agency designations requested by the federal government.

~~In carrying out its duties and responsibilities, the Council, insofar as practicable, shall preserve the individuality, traditions, and sense of responsibility of the respective institutions~~ each public institution of higher education in carrying out its duties.

~~The Council, insofar as practicable, shall seek the assistance and advice of the respective institutions~~ each public institution of higher education in fulfilling ~~all of~~ its duties and responsibilities.

Drafting note: In subdivision 15, "rules and regulations" is changed to read "regulations" per recommendation of the Code Commission. Subdivisions 21 through 26

incorporate the provisions of existing §§ 23-9.8, 23-9.8:1, 23-9.13, 23-9.5, and 23-9.10:1 and the second sentence of existing § 23-261, respectively. Technical changes are made, including the incorporation of title-wide definitions and the replacement of references to "state" or "Virginia" with "Commonwealth" per Code Commission policy. The name of the Brown v. Board of Education Scholarship Committee in proposed subdivision 22 is corrected based on amendments made in 2010.

§ ~~23-9.2:3.04~~ 23.1-2xx. (Expires June 30, 2017) Post-graduation employment rates.

~~By August 1, 2013, and each year thereafter, the State Council of Higher Education for Virginia~~ The Council shall annually publish data on its website on the proportion of graduates ~~with employment at who are employed (i)~~ 18 months and ~~(ii)~~ five years after the date of graduation for each public institution ~~and each of higher education or nonprofit~~ private ~~nonprofit~~ institution of higher education eligible to participate in the Tuition Assistance Grant Program (§ 23-6xx et seq.) [existing Chapter 4.1 of Title 23]. The data shall include the program and the program level, as recognized by the ~~State Council of Higher Education~~, for each degree awarded by each institution ~~and shall, at a minimum, include:~~ the percentage of graduates known to be employed in the Commonwealth, the average salary, and the average higher education-related debt for the graduates on which the data is based; rates of enrollment in remedial coursework for each institution; individual student credit accumulation for each institution; rates of postsecondary degree completion; and any other information that the Council determines is necessary to address adequate preparation for success in postsecondary education and alignment between secondary and postsecondary education. The Council shall disseminate to each public high school and each institution of higher education in the Commonwealth for which the Council has student-level data a link on its website to the published data. The Council shall provide a notification template that each public high school may use to annually notify students and their parents about the availability of such data. The published data shall be consistent with the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) and the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

Drafting note: An obsolete reference to an August 1, 2013, deadline is stricken and technical changes are made.

~~CHAPTER 20.~~

~~RESPONSIBILITY FOR FEDERAL PROGRAMS.~~

Drafting note: Since all sections except § 23-261 of existing Chapter 20 (§§ 23-261 through 23-264) are repealed and existing § 23-261 is relocated to proposed Chapter 2, existing Chapter 20 is stricken.

~~§ 23-261. 23.1-2xx. Council responsible for federal programs. Authority to carry out federal requirements.~~

~~The State Council of Higher Education of Virginia shall have full authority to may prepare plans, administer federal programs, and or receive and disburse any federal funds in accordance with the responsibilities assigned to it by federal statutes or regulations. It shall also undertake such other duties as may be additionally assigned to it by the Governor in response to agency designations requested by the federal government.~~

Drafting note: The second sentence of existing § 23-261 is stricken and incorporated instead as proposed subdivision 26 of § 23.1-2xx (duties). Technical changes are made, including the replacement of "shall have full authority" with "may."

§§ 23-262, 23-263.

Drafting note: Repealed by Acts 1991, c. 590.

§ 23-264.

Drafting note: Repealed by Acts 1984, c. 734.

~~§ 23-9.6:1.01. 23.1-2xx. Assessments of institutional the performance of public institutions of higher education.~~

A. 1. The State Council shall develop and revise ~~from time to time as appropriate~~, in consultation with the respective ~~chairmen~~ Chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state

officials as may be designated by the Governor, objective measures of educational-related performance and institutional performance benchmarks for such objective measures for each public institution of higher education. At a minimum, the ~~State~~ Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through ~~B~~ 10 of § ~~23-38.88~~ 23.1-10xx.

~~The State Council shall develop the initial objective measures and performance benchmarks for consideration by the Governor and the General Assembly no later than October 1, 2005.~~

2. The Governor shall develop and revise ~~from time to time~~ as appropriate objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11 of § ~~23-38.88~~ 23.1-10xx. ~~The Governor shall develop the initial measures and performance benchmarks and report his recommendations to the General Assembly prior to November 15, 2005.~~

B. The Governor shall include objective measures of financial and administrative management and educational-related performance and related institutional performance benchmarks as described in subsection A in "The Budget Bill" submitted as required by subsection A of § 2.2-1509 or in his proposed gubernatorial amendments to the general appropriation act pursuant to subsection E of § 2.2-1509.

C. The ~~State~~ Council shall annually assess the degree to which each ~~individual~~ public institution of higher education has met the financial and administrative management and educational-related performance benchmarks set forth in the current general appropriation act ~~in effect~~. Such annual assessment shall be based upon the objective measures and institutional performance benchmarks included in the annual current general appropriation act ~~in effect~~. The ~~State~~ Council shall request assistance from the Secretaries of Finance and Administration, who shall provide such assistance, for ~~purposes~~ the purpose of assessing whether ~~or not~~ public institutions of higher education have met the financial and administrative management performance benchmarks.

No later than June 1 of every fiscal year ~~beginning with the fiscal year that immediately follows the fiscal year of implementation as defined in § 2.2-5005~~, the ~~State~~ Council shall provide a certified written report of the results of such annual assessment to the Governor and the respective ~~chairmen~~ Chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health.

~~Those institutions~~ Each public institution of higher education that ~~are~~ is certified by the ~~State~~ Council as having met the financial and administrative management and educational-related performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be entitled to the financial benefits set forth in § 2.2-5005. Such benefits shall first be provided as determined under such section.

D. ~~Notwithstanding any other provision of this section, no institution shall be required to submit documentation that it has met the financial and administrative management and educational-related performance benchmarks set forth in the general appropriations act for the fiscal years 2011-2012 and 2012-2013. If an institution is certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks for the fiscal year 2010-2011, then such institution shall be entitled to the financial benefits set forth in subdivision B-14 of § 2.2-1124, subsection C of § 2.2-1132, subdivisions 4 and 5 of § 2.2-1149, subsection C of § 2.2-1150, subdivision C-2 of § 2.2-1153, § 2.2-1609, subdivision A-4 of § 2.2-2007, subsection E of § 2.2-2901, § 2.2-5005, subdivisions 1 and 3 of § 23-38.90, and subsection C of § 36-98.1 for the fiscal years 2011-2012 and 2012-2013.~~

Drafting note: Obsolete language in subdivisions A 1 and 2 and subsections C and D is stricken. Technical changes are made, including striking the superfluous phrase "from time to time" per Code Commission policy.

~~§ 23-9.6:2~~ 23.1-2xx. Tuition relief, refunds, and reinstatement for certain students in the uniformed services.

A. The Council shall issue and ~~from time to time~~ revise guidelines for tuition relief, refunds, and reinstatement for students whose service in the uniformed services has required

their sudden withdrawal or prolonged absence from their enrollment in a public institution of higher education and shall provide for the required reenrollment of such students by the relevant institution. These guidelines shall be excluded from the provisions of the Administrative Process Act pursuant to § 2.2-4002.

B. The Council shall appoint an advisory committee of at least 10 representatives of the public institutions of higher education to assist in the development and subsequent revision of ~~these such~~ guidelines. The Council shall consult with the Office of the Attorney General and ~~shall~~ provide opportunity for public comment prior to issuing ~~any~~ such guidelines or revisions.

~~The C.~~ Such guidelines shall include procedures for the required reenrollment of students whose service in the uniformed services precluded their completion of a semester or equivalent term and policies for the required reenrollment of such ~~military~~ students in the uniformed services.

Drafting note: Technical changes are made, including striking the superfluous phrase "from time to time" per Code Commission policy and logically imposing a subsection structure on the proposed section.

~~§ 23-9.7.~~

Drafting note: Repealed by Acts 1974, c. 544.

~~§ 23-9.9 23.1-2xx. Preparation of budget Budget requests; submission of budget requests to Council; coordinating requests; submission of and recommendations to Governor and General Assembly.~~

A. The Council ~~of Higher Education~~ shall develop policies, formulae, and guidelines for the fair and equitable distribution and use of public funds among the public institutions of higher education, taking into account enrollment projections and recognizing differences ~~as well as and~~ similarities in institutional missions. Such policies, formulae, and guidelines ~~as are developed by the Council~~ shall include provisions for operating expenses and capital outlay programs and shall be utilized by all public institutions of higher education in preparing requests for appropriations. The Council shall consult with the Department of Planning and Budget in the

development of such policies, formulae, and guidelines to ~~insure~~ ensure that they are consistent with the requirements of the Department of Planning and Budget.

B. Not less than ~~thirty~~ 30 days prior to submitting its biennial budget request to the Governor, the governing board of each public institution of higher education shall transmit to the Council such selected budgetary information relating to its budget request for maintenance and operation and for capital outlay as the Council shall reasonably require. The Council shall analyze such information in light of the Council's plans, policies, formulae, and guidelines and shall submit to the Governor recommendations for approval or modification of each institution's request together with a rationale for each such recommendation. The Council shall make available to the General Assembly its analyses and recommendations concerning institutional budget requests.

C. Nothing ~~herein in this section~~ shall prevent any institution of higher education from appearing through its representatives or otherwise before the Governor ~~and his, the Governor's~~ advisory committee on the budget, the General Assembly, or any committee ~~thereof of the~~ General Assembly at any time.

~~§ 23-9.9:1. Funds for graduate marine science consortium.~~

D. Funds for any consortium created by ~~the~~ The College of William and Mary, Old Dominion University, the University of Virginia, and the Virginia Polytechnic Institute and State University for the purpose of promoting graduate marine science education may be included in the budget request of and the appropriations to the ~~State Council of Higher~~ Education.

Drafting note: Technical changes are made, including logically imposing a subsection structure on the proposed section. The provisions of existing § 23-9.9:1 are incorporated as proposed subsection D.

~~§ 23-9.9:01~~ 23.1-2xx. Reports of expenditures of state funds.

The governing ~~body~~ board of each public institution of higher education shall provide the ~~State Council of Higher Education~~ annual data indicating the apportionment and amounts of

expenditures that the relevant institution expends by category, including academic costs, administration, research, and public service, as defined by the Council. The Council shall compile and submit a report of such data annually to the Governor and the General Assembly.

Drafting note: Technical changes are made.

~~§ 23-9.10.~~

Drafting note: Repealed by Acts 1996, cc. 110 and 127.

~~§ 23-9.10:2 23.1-2xx.~~ Advisory services to accredited nonprofit private ~~nonprofit colleges and universities~~ institutions of higher education; ~~Private College Advisory Committee continued as~~ Private College Advisory Board.

~~(a) A.~~ The Council shall provide advisory services to, ~~and with respect to, the~~ accredited nonprofit private, accredited, nonprofit colleges and universities within the Commonwealth institutions of higher education on academic and administrative matters. The Council may ~~also~~ review and advise on joint activities, including contracts for services, between private and public ~~colleges and universities~~ institutions of higher education and between private ~~colleges and universities~~ institutions of higher education and any agency or political subdivision of the Commonwealth ~~or political subdivision thereof~~. The Council may collect and analyze such data as may be pertinent to such activities.

~~(b) The Private College Advisory Committee established and maintained by the Council is continued and shall hereafter be known as the Private College Advisory Board.~~ B. The Council shall seek the advice of the Private College Advisory Board, and the Advisory Board shall assist the Council in the performance of its duties as required by subsection ~~(a) herein~~ A. The Private College Advisory Board shall be composed of ~~college and university representatives~~ a broad representation of accredited nonprofit private institutions of higher education and such other members as the Council may select.

~~(c) The Private College Advisory Board shall be broadly representative of the private sector of nonprofit higher education in the Commonwealth.~~ C. The Private College Advisory Board shall meet at least ~~twice~~ once each year ~~and shall advise the Council and the private~~

~~accredited nonprofit colleges and universities in the Commonwealth with respect to such matters as may come before it.~~

D. The Council may employ such qualified personnel as may be required to assist the Private College Advisory Board in the performance of its duties.

Drafting note: The first sentence of existing subsection (b) is stricken as obsolete. Technical changes are made. Meeting frequency in proposed subsection C is changed to once annually to reflect the current practice of the Private College Advisory Board.

~~§ 23-9.10:4.~~

Drafting note: Repealed by Acts 2006, cc. 77 and 899, cl. 2.

~~§§ 23-9.11, 23-9.12.~~

Drafting note: Repealed by Acts 1974, c. 544.

~~§ 23-9.13:1.~~

Drafting note: Repealed by Acts 2014, c. 484, cl. 2.

~~§ 23-9.14:3~~ 23.1-2xx. Distance learning reciprocity agreements; participation; Distance Learning Reciprocity Advisory Council.

A. The ~~State~~ Council ~~of Higher Education~~ may enter into interstate reciprocity agreements that authorize accredited degree-granting institutions of higher education located in the Commonwealth to offer postsecondary distance education. The ~~State~~ Council shall administer such agreements and shall approve or disapprove participation in such agreements by accredited degree-granting institutions of higher education located in the Commonwealth. Participation in the agreements ~~shall be~~ is voluntary.

B. The ~~State~~ Council shall establish the Distance Learning Reciprocity Advisory Council, which shall include representatives from each ~~participating~~ institution that offers postsecondary distance education pursuant to an interstate reciprocity agreement as set forth in subsection A. The Advisory Council shall advise the ~~State~~ Council on the development of policies governing the terms of participation by eligible institutions, including the establishment

of fees to be paid by participating institutions to cover direct and indirect administrative costs incurred by the ~~State~~ Council.

B. Nothing in this section shall be construed to prohibit accredited degree-granting institutions of higher education located in the Commonwealth that do not participate in any interstate reciprocity agreement entered into by the ~~State~~ Council ~~of Higher Education~~ from offering postsecondary distance education.

Drafting note: Technical changes.

§ ~~23-9.14~~ 23.1-2xx. Effect upon powers of governing boards of public institutions of higher education; endowment funds.

A. The powers of the governing boards of ~~the several~~ public institutions of higher education over the affairs of such institutions shall not be impaired by the provisions of this chapter except to the extent that powers and duties are ~~herein~~ specifically conferred upon the ~~State~~ Council ~~of Higher Education~~ in this chapter.

B. The Council shall have no authority over the solicitation, investment, or expenditure of endowment funds now held or in the future received by any ~~of the~~ public ~~institutions~~ institution of higher education.

Drafting note: Technical changes are made.

~~CHAPTER 21.1.~~

~~REGULATION OF CERTAIN PRIVATE AND OUT-OF-STATE INSTITUTIONS OF
HIGHER EDUCATION.~~

Article 3.

Regulation of Certain Private and Out-of-State Institutions of Higher Education.

Drafting note: Existing Chapter 21.1 is reorganized as proposed Article 3 of Chapter 2.

§ ~~23-276.1~~ 23.1-2xx. Definitions.

As used in this ~~chapter~~ article, unless the context requires a different meaning:

~~"Academic-Vocational"~~ "Academic-vocational non-college degree school" ~~refers to~~
means a ~~noncollege~~ non-college degree school that offers degree and nondegree credit courses.

"Agent" means a person who is employed by any institution of higher education or
~~noncollege~~ non-college degree school, whether such institution or school is located within or
outside the Commonwealth, to act as an agent, solicitor, procurer, broker, or independent
contractor to procure students or enrollees for any such institution or school by solicitation in
any form at any place in the Commonwealth other than the office or principal location of such
institution or school.

"Certificate" ~~or "diploma"~~ means an award that is given for successful completion of a
curriculum ~~comprised of~~ consisting of courses that may also be taken for degree credit ~~and shall~~
~~apply only to those awards given for coursework offered~~ by institutions of higher education ~~and~~
or academic-vocational ~~noncollege~~ non-college degree schools. "Certificate" includes a
diploma.

"College" means any institution of higher education that offers ~~associate~~ associate-level
~~or baccalaureate-level~~ baccalaureate-level degree programs.

"Continuing or professional education" means those classes, courses, ~~and or~~ or programs;
designed specifically for individuals who have completed a degree in a professional field; that
(i) are intended to fulfill the continuing education requirements for licensure or certification in
~~said profession; such professional field,~~ (ii) have been approved by a legislatively or judicially
established board or agency responsible for regulating the practice of the profession; ~~and~~ and (iii)
are offered exclusively to an individual practicing in ~~the profession~~ such professional field.

~~"Council" means the State Council of Higher Education for Virginia.~~

"Degree" means any earned award at the associate, baccalaureate, graduate, first
professional, or specialist levels that represents satisfactory completion of the requirements of a
program or course of study or instruction beyond the secondary school level.

"Degree credit ~~course~~" means any earned credits awarded for successful completion of
the requirements of a course of study or instruction beyond the secondary school level, ~~which~~

that may be used toward completion of a certificate or ~~diploma, or an associate, baccalaureate,~~
~~graduate, first professional or specialist level~~ degree.

"For-profit" means privately owned and managed.

"Fraudulent academic credential" means a ~~diploma, certification certificate,~~ academic transcript, or other document issued by a person ~~or an entity~~ that is not an institution of higher education that provides evidence of or demonstrates completion of ~~course work~~ coursework or academic credit that results in the issuance of ~~an associate or more advanced~~ a degree.

~~"In-state institution" means an institution of higher education that is formed, chartered, or established within Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) it has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) it produces clear and convincing evidence that its main or principal campus is located in Virginia.~~

"Institution of higher education" or "institution" means any person ~~or entity~~, other than a Virginia state-supported public institution of higher education ~~named in § 23-9.5~~ or any ~~public institution of higher education established in statute as an authority and declared a governmental instrumentality~~ other entity authorized to issue bonds pursuant to § ~~23-14~~ 23.1-11xx, that has received approval from the Council to (i) use the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business; (ii) enroll students; or (iii) offer approved courses for degree credit or programs of study leading to a degree or ~~to~~ offer degrees either at a site ~~in Virginia~~ or via telecommunications equipment located ~~within Virginia in the Commonwealth.~~

"Multistate compact" means any agreement involving two or more states to jointly offer jointly postsecondary educational opportunities; pursuant to policies and procedures ~~set forth by~~ established in such agreement and approved by the Council.

~~"Nonecollege~~ "Non-college degree school" means any postsecondary school that offers courses or programs of study that do not lead to ~~an associate or higher level~~ a degree. ~~Such~~

587 ~~schools may be~~ "Non-college degree school" includes academic-vocational ~~or non-college~~
588 degree schools and vocational non-college degree schools.

589 "Nondegree credit ~~course~~" means any earned credits awarded for successful completion
590 of the requirements of a course of study or instruction beyond the secondary school level, ~~which~~
591 that may be used toward completion of a certificate ~~or diploma~~, but may not be used to earn ~~an~~
592 associate or higher level a degree.

593 "Out-of-state institution" means an institution of higher education that is formed,
594 chartered, established, or incorporated outside of the Commonwealth.

595 "Postsecondary school" ~~or "school"~~ means any ~~entity~~ institution of higher education or
596 non-college degree school offering formal instructional programs with a curriculum designed
597 primarily for students who have completed the requirements for a high school diploma or its
598 equivalent. ~~Such schools include~~ "Postsecondary school" includes programs of academic,
599 vocational, and continuing professional education, ~~and exclude except course or programs of~~
600 continuing professional education set forth in subdivision B 4 of § 23.1-2xx (exemptions).
601 "Postsecondary school" does not include avocational and adult basic education programs. ~~For~~
602 ~~the purposes of this chapter, a "postsecondary school" shall be classified as either an institution~~
603 ~~of higher education as defined in this section or a noncollege degree school, as defined in this~~
604 section.

605 "Program" means a curriculum or course of study in a discipline or interdisciplinary area
606 that leads to a degree, or certificate, ~~or diploma~~.

607 "Program area" means a general group of disciplines in which one or more ~~degree~~
608 programs, ~~certificates, or diplomas~~ may be offered.

609 ~~"Proprietary" means a privately owned and managed, profit-making institution of higher~~
610 education or noncollege degree school.

611 "Site" means a location in ~~Virginia~~ the Commonwealth where a postsecondary school (i)
612 offers ~~one or more courses~~ at least one course on an established schedule and (ii) enrolls at least
613 ~~two or more persons~~ individuals who are not members of the same household, regardless of the

presence or absence of administrative capability at such location. ~~A site may be~~ "Site" includes a branch of ~~such a~~ postsecondary school, ~~and shall not be required to possess administrative capability.~~

"Teachout plan" means a written agreement between or among postsecondary schools that provides for the equitable treatment of students if one party to the agreement ~~stops offering~~ ceases to offer an educational program before all students enrolled in that program complete the program.

"University" means any institution ~~offering of higher education that offers~~ programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational non-college degree school" ~~refers to means~~ a ~~noncollege non-college~~ degree school that offers only courses for nondegree credit ~~courses, and shall.~~ "Vocational non-college degree school" does not include instructional programs that are intended solely for recreation, enjoyment, or personal interest, or as a hobby, or courses or instructional programs ~~of instruction~~ that prepare individuals to teach such pursuits.

Drafting note: Technical changes are made to the article-wide definitions section.
"Proprietary" is replaced with "for-profit"; the term "proprietary" only occurred three times in a single section in existing Chapter 21.1 and "for-profit" has the same meaning and is used frequently throughout existing Title 23. The definition of "in-state institution" is deleted; the term "in-state institution" is not used in this proposed article.

§ ~~23-276.1-1~~ 23.1-2xx. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever ~~in this chapter~~ the Council is required to send any mail or notice by certified mail pursuant to this article and such mail or notice is sent certified mail, return receipt requested, ~~then the Council may send~~ any subsequent, identical mail or notice ~~that is sent by the Council may be sent~~ by regular mail.

Drafting note: Technical changes are made, including the usage of the active voice.

640 § ~~23-276.3~~ 23.1-2xx. Authority of the ~~State~~ Council ~~of Higher Education~~; regulations;
641 standards for postsecondary schools; delegation of authority to director.

642 A. The ~~State~~ Council ~~of Higher Education for Virginia~~ shall adopt, pursuant to the
643 Administrative Process Act (§ 2.2-4000 et seq.), such regulations as may be necessary to
644 implement the provisions of this ~~chapter~~. ~~The Council's regulations shall include, but need not~~
645 ~~be limited to~~ article, including (i) procedures by which a postsecondary school may apply for
646 Council approval to confer degrees in ~~Virginia~~ the Commonwealth; (ii) measures designed to
647 ensure that all postsecondary schools that are subject to the provisions of this ~~chapter~~ article
648 meet the minimal ~~academic~~ standards established pursuant to subsection B; (iii) protections for
649 students pursuing postsecondary education opportunities in postsecondary schools subject to the
650 provisions of this ~~chapter~~ article; and (iv) information to assist persons who rely on
651 postsecondary degrees, ~~diplomas, and or~~ certificates ~~in judging to judge~~ the competence of
652 individuals in receipt of such degrees or certificates.

653 B. The Council shall establish minimal standards ~~established by the Council shall~~
654 ~~include, but need not be limited to, for postsecondary schools that include standards for~~ faculty
655 preparation and experience, educational programs, physical plants, additional locations,
656 finances, guaranty instruments, advertising and publications, maintenance of student records,
657 personnel qualifications, student services, the method for collecting and refunding tuition and
658 fees, library resources and services, organization and administration, changes of ownership or
659 control, procedures for student admission and graduation, agent or solicitor requirements,
660 consistency of a postsecondary school's stated purpose with the proposed offerings, reporting
661 requirements, and any other relevant standards or requirements promulgated by ~~action of the~~
662 ~~Council or~~ an accrediting agency recognized by the ~~United States~~ U.S. Department of
663 Education.

664 C. The Council shall prescribe the manner, conditions, and language to be used by a
665 postsecondary school, ~~person~~, or agent ~~thereof in disclosing of such school to disclose~~ or

~~advertising~~ advertise that the postsecondary school has received certification from the Council to offer postsecondary programs in ~~Virginia~~ the Commonwealth.

D. ~~In addition to the other requirements of this chapter, the~~ The Council may establish separate certification criteria for various postsecondary school classifications.

E. ~~Pursuant to the provisions of this chapter and its implementing regulations, the~~ The Council may grant to its director the authority to take ~~on its behalf~~, specific actions on its behalf in furtherance of the provisions of this article.

Drafting note: Technical changes.

§ ~~23-276.13~~ 23.1-2xx. ~~Establishment of the~~ Career College Advisory Board established.

A. The Council shall establish and seek the advice of the Career College Advisory Board, which shall assist the Council in the performance of its duties and provide advisory services in academic and administrative matters related to private ~~proprietary for-profit~~ institutions of higher education ~~and or~~ academic-vocational ~~noncollege~~ non-college degree schools. The Career College Advisory Board shall be composed of college and university representatives and such other members as the Council may select and shall be broadly representative of ~~the~~ private ~~proprietary sector of~~ for-profit institutions of higher education and academic-vocational ~~noncollege~~ non-college degree schools.

B. The Career College Advisory Board shall meet at least twice each year and ~~shall~~ advise the Council ~~and the~~, private ~~proprietary accredited~~ for-profit institutions of higher education, and academic-vocational ~~noncollege~~ non-college degree schools ~~in the Commonwealth~~ regarding such matters as may come before ~~it~~ the Career College Advisory Board. The Council may employ such qualified personnel as may be required to assist the Career College Advisory Board in the performance of its duties.

Drafting note: Technical changes.

§ ~~23-276.14~~ 23.1-2xx. ~~Certificates generally~~ Certification required.

A. No person shall open, operate, or conduct any postsecondary school in ~~this the~~ Commonwealth without ~~a certificate~~ certification to operate such postsecondary school issued

by the Council. The Council shall ~~issue a certificate to~~ certify those postsecondary schools in compliance with ~~the~~ Council regulations issued pursuant to this ~~chapter~~ article.

B. Postsecondary schools shall seek such certification from the Council immediately after receipt of a valid business license issued by the relevant official of the locality in which it seeks to operate.

Drafting note: Technical changes are made, including the replacement of references of "certificate" with "certification." Certificate is already defined for the article.

§ ~~23-276.15~~ 23.1-2xx. List of postsecondary schools holding valid ~~certificates~~ certification.

The Council shall maintain a list of postsecondary schools holding valid ~~certificates~~ certification under the provisions of this ~~chapter, which article and~~ shall ~~be~~ make such list available ~~for the information of~~ to the public.

Upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the Council shall notify in writing the relevant local Commissioner of the Revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirement; and shall recommend revocation of the postsecondary school's business license.

Drafting note: Technical changes are made, including the replacement of references of "certificate" with "certification." Certificate is already defined for the article.

§ ~~23-276.4~~ 23.1-2xx. Council certification ~~required for the conferring of certain degrees and other awards or the offering of certain programs;~~ requirements and prohibitions.

A. Without obtaining the certification of the Council or a determination that the activity or program is exempt from such certification requirements, no postsecondary school subject to the provisions of this ~~chapter~~ article shall:

1. Use the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business;

2. Enroll students;

720 3. Offer degrees, courses for degree credit, programs of study leading to a degree, or
721 courses for nondegree credit ~~courses~~, either at a site ~~in Virginia~~ or via telecommunications
722 equipment located within ~~Virginia~~ the Commonwealth; or

723 4. Initiate other programs for degree credit or award degrees, or certificates, ~~or diplomas~~
724 at a new or additional level.

725 B. All institutions of higher education and academic-vocational ~~noncollege~~ non-college
726 degree schools subject to the provisions of this ~~chapter~~ article shall be fully accredited by an
727 accrediting agency recognized by the ~~United States~~ U.S. Department of Education.

728 C. All ~~out-of-state academic-vocational noncollege degree schools operating in good~~
729 ~~standing in the Commonwealth prior to July 1, 2006, that have not obtained accreditation by an~~
730 ~~accrediting agency recognized by the United States Department of Education shall secure~~
731 ~~accreditation candidacy status by July 1, 2009, and shall secure full accreditation by an~~
732 ~~accrediting body recognized by the United States Department of Education by July 1, 2012.~~
733 ~~Further, on and after July 1, 2006, all~~ out-of-state academic-vocational ~~noncollege~~ non-college
734 degree schools, subject to the provisions of this ~~chapter~~, article shall disclose their accreditation
735 status in all written materials advertising or describing ~~the~~ such school that are distributed to
736 prospective or enrolled students or the general public.

737 ~~C. Institutions of higher education~~ D. No postsecondary school shall ~~not~~ be required to
738 obtain another certification from the Council to operate in ~~Virginia~~ the Commonwealth if ~~they~~ it
739 (i) ~~were~~ was formed, chartered, or established in the Commonwealth, or chartered by an Act of
740 Congress; (ii) ~~have~~ has maintained a main or branch campus continuously in the
741 Commonwealth for at least 20 calendar years under ~~their~~ its current ownership; (iii) ~~were~~ was
742 continuously approved or authorized to confer or grant academic or professional degrees by the
743 Council, ~~by~~ the Board of Education, or ~~by~~ an act of the General Assembly during those 20
744 years; and (iv) ~~are~~ is fully accredited by an accrediting agency that is recognized by, and has
745 met the criteria for Title IV eligibility of the ~~United States~~ U.S. Department of Education. If ~~the~~
746 Council revokes an institution's authorization to confer or grant academic or professional

degrees ~~is revoked~~, the institution must seek recertification ~~and must do so~~ annually until it meets the criteria of this subsection.

~~D. E.~~ In addition to such other requirements as are established in this ~~chapter article~~ or the regulations of the Council, any postsecondary school formed, chartered, or established outside of the Commonwealth shall provide verification that:

1. The ~~institution~~ postsecondary school is fully accredited by an accrediting agency recognized by the ~~United States~~ U.S. Department of Education;

2. All courses, degrees, or certificates, ~~or diploma programs~~ offered at any ~~Virginia~~ site are also offered at the postsecondary school's main out-of-state campus;

3. All credits earned at any ~~Virginia~~ site are transferable to an institution's main out-of-state campus; and

4. The school has complied with the requirements of either Article 17 (§ 13.1-757 et seq.) of Chapter 9 of Title 13.1 or Article 14 (§ 13.1-919 et seq.) of Chapter 10 of Title 13.1.

~~E. F.~~ Any postsecondary school that seeks to conduct telecommunications activities from a ~~Virginia~~ site shall apply for Council approval to conduct such activity and shall comply with this ~~chapter article~~ and the Council's regulations in the same manner as any other postsecondary school subject to this ~~chapter article~~.

Drafting note: Language in proposed subsection C is stricken as obsolete. Technical changes are made, including striking "Virginia" where it occurs immediately preceding "site"; such specification is already included in the article-wide definition.

~~§ 23-276.5~~ 23.1-2xx. Approval procedures.

A. Prior to Council approval for a postsecondary school to use the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business, ~~to~~ offer courses or programs for degree credit, enroll students in any courses or programs, or confer or award degrees, each postsecondary school shall be evaluated by the Council in accordance with the regulations adopted pursuant to ~~this chapter~~ § 23.1-2xx [existing § 23-276.3].

B. Upon finding that the applicant has fully complied with the regulations adopted pursuant to § 23.1-2xx [existing § 23-276.3], the Council shall approve the application.

C. The Council may defer a decision on an application upon determining that additional information is needed.

D. The Council shall not take into account duplication of effort by public ~~and or~~ private institutions ~~in the Commonwealth of higher education~~ or other questions of need when considering an application.

Drafting note: Technical changes are made, such as including adding cross-references in subsections A and B.

§ ~~23-276.6~~ 23.1-2xx. Refusal, suspension, ~~and or~~ revocation of approval or certification.

A. The Council may refuse to grant a certification, may revoke or suspend a prior approval or certification, ~~as the case may be~~, including any approval or authorization issued prior to July 1, 1980, ~~and or~~ may add conditions to any approval or certification, ~~as the case may be~~, on such grounds as may be provided in its regulations or ~~any of if~~ the ~~following grounds~~ postsecondary school:

1. ~~The school submits~~ Submits or has submitted any false or misleading information to the Council in connection with its approval;

2. ~~The school or any of its locations fails~~ Fails to meet or to maintain compliance with the Council's regulations at any of its locations;

3. ~~The school publicly~~ Publicly makes or causes to be made any false or misleading representation that it has complied with any requirement of this ~~chapter article~~ or the Council's regulations;

4. ~~The school violates~~ Violates any provision of this ~~chapter article~~ or the Council's regulations; or

5. ~~The school fails~~ Fails or refuses to furnish the Council with any requested information or records required by this ~~chapter article~~ or the Council's regulations.

800 B. The Council may refuse to grant an approval or may place conditions on an approval
801 for a request to use a name that incorporates terms deemed by the Council to be misleading to
802 consumers, students, or the general public regarding the postsecondary school's affiliation or
803 association with any public institution ~~or system~~ of higher education ~~in the Commonwealth. The~~
804 ~~Council but~~ shall not, ~~however,~~ add conditions to, revoke, or suspend a prior approval of a
805 name. The Council shall, by regulation, designate the terms deemed to be misleading, which
806 shall include, ~~but shall not be limited to,~~ "public university," "public college," and "community
807 college."

808 C. The Council shall notify ~~the a~~ postsecondary school by certified mail, return receipt
809 requested, of its intention to deny an application, suspend or revoke a prior approval or
810 certification, ~~as the case may be,~~ or add conditions to an approval or certification, ~~as the case~~
811 ~~may be,~~ and ~~shall~~ state in writing the reasons for the denial, suspension, revocation, or
812 conditions. The postsecondary school may, within 10 days of receipt of the certified mail notice,
813 submit a written request for a proceeding before the Council pursuant to Article 3 (§ 2.2-4018 et
814 seq.) of Chapter 40 of Title 2.2.

815 D. The Council may issue orders to comply with its regulations or the provisions of this
816 chapter article; unless an emergency exists, such orders shall only be issued after a proceeding
817 pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2.

818 E. In accordance with Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2, any
819 postsecondary school aggrieved by (i) a decision of the Council to deny an application ~~or,~~
820 suspend or revoke a prior approval or certification, ~~as the case may be,~~ or add conditions to an
821 approval or certification, ~~or aggrieved by (ii)~~ any order to comply with this article or the
822 Council's regulations ~~or this chapter~~ may appeal such decision. The Council shall make a final
823 administrative decision on such appeal in accordance with the Administrative Process Act (§
824 2.2-4000 et seq.).

825 F. In order to regain approval, a postsecondary school that has had its approval or
826 certification, ~~as the case may be~~ revoked or suspended by the Council shall file a new

application for certification and ~~shall~~ provide clear and convincing evidence that the conditions resulting in the suspension or revocation have been remedied and ~~that~~ the postsecondary school is in compliance with this ~~chapter~~ article and the Council's regulations.

Drafting note: Technical changes are made, including changing ambiguous references from "school" to "postsecondary school."

§ ~~23-276.7~~ 23.1-2xx. Emergency actions.

A. The Council may, by regulation, authorize its director to take immediate action on its behalf in any instance in which a postsecondary school holding certification to operate in Virginia the Commonwealth is the subject of an adverse action by the ~~United States~~ U.S. Department of Education or ~~by~~ the postsecondary school's accrediting agency. When such adverse action threatens a disruption of the operation of the postsecondary school and exposes students to a loss of course or degree credit or financial loss, the director may ~~take any or all of the following actions:~~

1. Suspend new enrollment in specified programs, or degree levels or ~~in~~ all programs and degree levels that have been approved by the Council;

2. Require the postsecondary school to provide a guaranty instrument in the amount necessary to cover the refund of unearned tuition to all students enrolled at the time of the action; or

3. Take such other actions as may be necessary to protect the rights of currently enrolled or future students.

B. At its next regularly scheduled meeting, the Council shall either ratify the director's action or take such other actions as it ~~may deem~~ deems necessary.

Drafting note: Technical changes are made, including changing ambiguous references from "school" to "postsecondary school."

§ ~~23-276.8~~ 23.1-2xx. Preservation of students' records ~~required~~.

A. In the event of school closure or revocation of its approval or certification, the postsecondary school shall (i) make arrangements for the transfer of the academic and financial

records of all students to the Council within 30 days of the closure or (ii) with the approval of the Council, ensure preservation of the academic and financial records of all students by entering an agreement with another [postsecondary](#) school. An out-of-state [postsecondary](#) school that is public or corporately held may retain records at the [postsecondary](#) school's location outside of the Commonwealth but shall provide the Council with the contact information needed for each student to obtain copies of his academic and financial records.

B. This section shall not be deemed to interfere with students' rights to have access to and obtain copies of their own records or to authorize disclosure of student records except in compliance with applicable state and federal law, including the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, ~~as amended~~.

Drafting note: Technical changes.

§ ~~23-276.9~~ [23.1-2xx](#). Fees.

The Council may, ~~as it deems necessary to comply with the provisions of this chapter and its regulations~~, establish [nonrefundable](#) fees for services and methods for collecting such fees. ~~All fees shall be nonrefundable.~~

Drafting note: Technical changes.

§ ~~23-276.10~~ [23.1-2xx](#). Prohibited acts.

A. Without prior Council approval, no person or other entity subject to the provisions of this ~~chapter article~~ shall use in any manner, within the Commonwealth ~~of Virginia~~, the term "college" or "university" or abbreviations or words of similar meaning in its name ~~or in any manner~~, in connection with its academic affairs or business, or in any literature, catalog, pamphlet, or descriptive material.

This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in ~~Virginia~~ [the Commonwealth](#) by the Council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in ~~Virginia~~ [the Commonwealth on or](#) after July 1, 2002; (iii) was exempted from the provisions of ~~former~~

Chapter 21 (§ 23-265 et seq.) of ~~this title~~ Title 23, as such law was in effect prior to July 1, 2002; or (iv) was authorized by the Council to use a name while its request for approval to enroll students is pending before the Council.

B. No person or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree credit, degree, ~~diploma~~, or certificate.

C. No person ~~or other entity~~ shall ~~use~~:

1. Use or attempt to use, in connection with any business, trade, profession, or occupation, any degree ~~or certification of degree or credit~~, degree ~~credit~~, or certificate, including, ~~but not limited to, a any~~ transcript of coursework that ~~he it~~ knows or has reason to know has been fraudulently issued, obtained, forged, materially altered, or purchased;

~~D. No person or other entity shall issue~~ 2. Issue or manufacture a fraudulent academic credential;

~~E. No person or other entity shall physically~~ 3. Physically present a fraudulent academic credential, knowing it is fraudulent, in an attempt to obtain employment, promotion, licensure, or admission to an institution of higher education;

~~F. No person or entity that is not an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education, or having the foreign equivalent of such accreditation, shall in~~

4. In any way represent that it is an institution of higher education that is accredited by an accrediting agency recognized by the U.S. Department of Education or has the foreign equivalent of such accreditation if the person ~~or entity~~ is not so accredited; or

~~G. Unless exempted from the provisions of this chapter or granted approval by the Council in accordance with this chapter and relevant regulations, no person or other entity shall represent~~ 5. Represent that credits earned at or granted by any institution of higher education or academic-vocational ~~none~~ college non-college degree school may be applied for credit toward a

degree unless such person is exempted from the provisions of this article or granted certification or approval by the Council in accordance with this article and the Council's regulations.

Drafting note: Technical changes are made. Existing subsections D through G are logically reorganized as subdivisions A 2 through 5.

~~§ 23-276.2~~ 23.1-2xx. Exemptions.

A. The provisions of this ~~chapter article~~ shall not apply to ~~the public state supported institutions named in § 23-9.5 or~~ any public institution of higher education ~~established in statute as an authority and declared a governmental instrumentality pursuant to § 23-14 as that term is defined in § 23.1-100 or any entity authorized to issue bonds pursuant to § 23.1-11xx.~~

B. ~~In addition, the~~ The following activities or programs offered by postsecondary schools that are otherwise subject to this ~~chapter article~~ shall be exempt from its provisions:

1. The awarding of ~~an any~~ honorary degree conferred that clearly states on its face that it is honorary in nature and is regarded as (i) commemorative in recognition of an individual's contributions to society and (ii) not representative of the satisfactory completion of any or all ~~or any part~~ of the requirements of a program or course of study; ~~such degree shall clearly state on its face that it is honorary in nature;~~

2. A nursing education program or curriculum regulated by the Board of Nursing;

3. A professional or occupational training program subject to the approval of (i) a regulatory board pursuant to Title 54.1 or (ii) ~~other~~ another state or federal governmental agency;

4. ~~Those courses or programs of instruction given by~~ Any course or program of instruction provided or approved by any professional body, fraternal organization, civic club, or benevolent order ~~that are principally for~~ for which the principal purpose is continuing or professional education or a similar purpose and for which no degree credit is awarded;

5. ~~Those courses or programs~~ Any course or program offered through approved multistate compacts, including, ~~but not limited to,~~ the Southern Regional Education Board's Electronic Campus;

6. ~~Those courses~~ Any course offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S. Department of Education for accrediting purposes, ~~if such courses are provided,~~ solely on a contractual basis and for which (i) no individual is charged tuition and ~~for which~~ (ii) there is no advertising for open enrollment;

7. Any school, institute, or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business, or profession represented by such association;

8. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer one or more courses ~~cited as provided~~ in this ~~chapter~~ article, if the school collects any tuition, fees ~~and, or~~ charges ~~made by the school are collected~~ as ~~may be~~ permitted by Title 22.1, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body ~~of such~~ in the case of a private school; or

9. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or ~~to~~ prepare an individual for an examination for professional practice or higher education.

C. The Council shall exempt from the provisions of this ~~chapter~~ article any postsecondary school whose primary purpose is to provide religious or theological education. Postsecondary schools shall apply for exemptions to confer ~~diplomas,~~ certificates, or degrees related to religion and theology. Exemptions may be granted for a maximum of five years, unless the postsecondary school has been granted a standing exemption prior to July 1, 2002.

Each postsecondary school seeking such an exemption or continuation of such an exemption shall file such information as may be required by the Council. If the Council does not grant a postsecondary school an exemption, the postsecondary school shall be notified in writing with the reasons for the exemption denial. The affected postsecondary school shall have the right to appeal the Council's decision pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2. The Council shall, in each instance, determine the applicability of the exemption as provided in this section.

D. Notwithstanding the exemptions provided in this section, exempted postsecondary schools shall be subject to the provisions of subsection B of § ~~23-276.6~~ 23.1-2xx and a postsecondary school may seek Council approval for an otherwise exempt activity or program.

Drafting note: Technical changes. The phrase "but not limited to" is stricken after "including" in subdivision B 5 pursuant to § 1-218, which states: "'Includes' means includes, but not limited to."

§ ~~23-276.11~~ 23.1-2xx. Virginia law to apply to contracts.

The laws of ~~Virginia~~ the Commonwealth shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person enrolling in any course or program offered or to be offered by such school in ~~Virginia and the Commonwealth or~~ any person employed or offered employment by such school in ~~Virginia the Commonwealth.~~

Drafting note: Technical changes. "Virginia" is changed to "Commonwealth" per Code Commission policy.

§ ~~23-276.12~~ 23.1-2xx. Violations; ~~criminal penalty; injunction proceeding; civil penalty~~ penalties; remedies.

A. Violations of this ~~chapter article~~ or the Council's implementing regulations ~~may be~~ are punishable as a Class 1 misdemeanor. Each degree, ~~diploma~~, certificate, program, academic transcript, or course of study offered, conferred, or used in violation of this ~~chapter article~~ or the Council's regulations shall constitute a separate offense.

B. ~~The Council may also institute a proceeding in equity to enjoin any violation of this chapter or its implementing regulations. Further, if~~ If no criminal prosecution is instituted against such postsecondary school pursuant to subsection A, the Council ~~shall have the authority to~~ may recover a civil penalty of at least \$200 but not more than \$1,000 per ~~violation, with each unlawful act constituting a~~ separate violation offense set forth in subsection A. In no event shall the civil penalties against any one person, corporation, or other entity exceed \$25,000 per year.

987 C. ~~Upon~~ The Council may institute a proceeding in equity to enjoin any violation of this
988 article or its implementing regulations and upon substantially prevailing on the merits of the
989 case and unless special circumstances would render such an award unjust, the Council ~~shall be~~
990 is entitled to an award of reasonable ~~attorney's~~ attorney fees and costs in any such action ~~to~~
991 ~~enjoin violations of this chapter or its implementing regulations.~~

992 **Drafting note: Technical changes, including changing "attorney's fees" to**
993 **"attorney fees" in subsection C per Code style.**

994 ~~§ 23-8.1.~~

995 **Drafting note: Repealed by Acts 1980, c. 658.**

996 ~~§ 23-8.2.~~

997 **Drafting note: Repealed by Acts 1991, c. 590.**

998 ~~§ 23-8.3, 23-9.~~

999 **Drafting note: Repealed by Acts 1980, c. 658.**

1000 ~~CHAPTER 21.~~

1001 ~~REGULATION OF CONFERRING DEGREES, ETC.~~

1002 ~~§§ 23-265 through 23-276.~~

1003 **Drafting note: Repealed by Acts 2002, c. 178, cl. 2.**

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